

EXHIBIT 1

CONFIDENTIAL – FOR DISCUSSION PURPOSES

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

**IN RE: AQUEOUS FILM-FORMING
FOAMS PRODUCTS LIABILITY
LITIGATION**

)
) **MDL No. 2:18-mn-2873-RMG**
)
) **CASE MANAGEMENT ORDER NO.**
)
) **This document relates to All Actions**
)

[PROPOSED] SOVEREIGN BELLWETHER CASE MANAGEMENT ORDER

The Court hereby issues this Case Management Order (“CMO”) to govern the advancement and potential resolution of cases brought by the Sovereign Plaintiffs in this MDL. This CMO follows the Court’s receipt of a bellwether litigation and dispute resolution proposal by the Sovereign Committee as well as conferral between the Sovereign Committee and Defendants.¹

This CMO establishes a timeline for progression of Sovereign cases.

A. Selection of a Sovereign Bellwether

The Court is informed that several Sovereigns are considering waiver of *Lexecon* in order to advance a bellwether process that culminates in a trial of claims in at least one Sovereign case. Accordingly, the Court orders as follows:

1. By November 7, 2023, the Sovereign Committee shall resolve whether there are Sovereign Plaintiffs that will waive *Lexecon* to proceed as a bellwether at a trial in the District of South Carolina. To the extent there are any Sovereign Plaintiffs who agree

¹ The Sovereign Committee is a subcommittee of the Plaintiffs’ Executive Committee and is comprised of 27 United States and Territories (“Sovereigns” or “Sovereign Plaintiffs”) who have filed cases that have been removed to, transferred to, or otherwise filed in this MDL, including: Alaska, Arizona, California, the Commonwealth of the Northern Mariana Islands, Colorado, the District of Columbia, Guam, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, and Wisconsin.

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to waive *Lexecon*, subparts (a) and (b) below shall apply. To the extent there are no Sovereigns willing to waive *Lexecon*, the Sovereign Committee shall submit to the Court any proposed alternative processes whereby a bellwether may nonetheless proceed (e.g. requesting inter-circuit or intra-circuit assignment).

- a. By November 17, 2023, the Sovereign Committee shall submit to the Court and serve Defendants with a list identifying which Sovereigns are willing to serve as a bellwether and a brief overview of how the advancement of these Sovereign cases as bellwethers will progress Sovereign and other common issues in this MDL.
- b. To the extent desired, Defendants shall respond to the Sovereign's list by November 27, 2023. Defendants and Sovereigns shall confer regarding the bellwether list and proposed sovereign bellwether process and deadlines by December 5, 2023. Sovereign Committee representatives and Defendants shall be prepared to discuss any issues and next steps regarding the Sovereign bellwether with the Court during the week of December 11, 2023. If there are no issues to discuss with the Court regarding the Sovereign bellwether, the Sovereign Committee and Defendants shall submit a proposed Sovereign bellwether schedule to the Court by December 11, 2023.

The Court continues to encourage the Sovereign Committee and Defendants to confer cooperatively regarding applicable processes and schedules. The Court may also consider and request the Sovereign Committee and Defendants consider the appointment of a special master.

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B. Dispute Resolution

The Court is informed that there is consensus among the Sovereigns that settlement discussions are advisable. Sovereigns and Defendants have conferred and have agreed on the following dispute resolution procedures:

[Insert Following Meet and Confer between Sovereign representatives and Defendants]

The Court hereby orders as follows:

1. By _____, the Sovereign Committee and all Defendants shall submit a confidential update to the Court regarding their progress on dispute resolution.

AND IT IS SO ORDERED

October [REDACTED], 2023

Charleston, South Carolina

Hon. Richard M. Gergel

United States District Judge